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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/619,548

07/16/2003

Robert Flower

14398

5957

21127

7590

08/23/2006

KUDIRKA & JOBSE, LLP
ONE STATE STREET
SUITE 800
BOSTON, MA 02109

EXAMINER

JOHNSON III, HENRY M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/619,548	FLOWER, ROBERT	
	Examiner	Art Unit	
	Henry M. Johnson, III	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Withdrawal of Finality

The applicant's after final amendment filed July 24, 2006 is acknowledged and entered.

The indicated allowability of claims 26-30 is withdrawn in view of re-evaluation of the prior art of record. Accordingly, the finality of the previous office action is withdrawn.

Rejections based on the newly interpreted references follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/47107 to Pang et al. in view of U.S. Patent 6,936,043 to Peyman. Pang teaches a method for treating neovascularization of an eye where a feeder blood vessel is located using fluorescent imaging and confirming the locations (page 19, line 5), then using a laser to burn the feeder (page 20, line 30), confirming the feeder vessel is blocked by injecting indocyanine green (ICG) and confirming the vessel does not "fill" (page 21, line 2) and then using photodynamic therapy to treat the target where the photosensitizer has selectively been absorbed and irradiating the target with a frequency of the sensitizers wavelength. The confirmation of the blocking of the feeder vessel is interpreted as an alternative equivalent of confirming the exit rate of sensitizer from the target tissue as both serve the purpose of confirming the feeder is blocked. ICG is also disclosed as working as a photosensitizer (Page 21, lines 33-37) thus establishing its use as both a fluorescing agent and sensitizing agent. The ICG may be administered as a bolus (page 19, line 31). Pang teaches the time required for a dye to reach

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an eye is 10 to 25 seconds and then the image capture sequence begins, thus teaching a pre-defined time interval (page 15, line 35). The feeder identification uses the dye with illumination and image capture to positively locate the feeder vessel (page 14-16). Pang et al. do not disclose additional photodynamic agents or PDT energy levels. Peyman discloses methods for treating age-related macular degeneration (AMD) to reduce vision loss in an AMD-affected eye, by treating the eye with photodynamic therapy (PDT) in combination with threshold laser coagulation therapy. The therapies may be administered in any sequence, that is, laser coagulation therapy may be administered before or after PDT, or they may be administered essentially simultaneously (Col. 5, lines 5-13). Photosensitizers disclosed include verteporfin (Col. 6, line 5) and Protoporphyrin IX (Col. 5, line 57). The light source is disclosed as being from 50-500 mW over a time of from 0.1 to 1 second (Col. 6, lines 40-44), thus producing energy levels overlapping those of the claims. It would have been obvious to one skilled in the art to use the alternative photosensitizers and power levels as taught by Peyman in the method of Pang et al., as a skilled artisan clearly knows the known photosensitizers and the fluences and wavelengths required for their activation and would be motivated to look to other disclosed methods for treating AMD. Minor alterations in the methods that do not result in unexpected advances in the treatment efficacies are obvious to one skilled in the art.

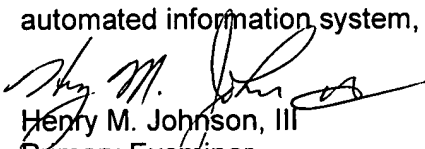
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Henry M. Johnson, III
Primary Examiner
Art Unit 3739